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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JAMES CLINTON FAIRCLOTH, JR.
7
8 v.
9

10 Petitioner,

11 PATRICK R. GLEBE,
12
13

14 Respondent.

15 No. C11-5895 RBL/KLS

16 **REPORT AND RECOMMENDATION**
17 **Noted for: May 4, 2012**

18 Pro se Petitioner James Clinton Faircloth filed a 28 U.S.C. § 2254 habeas petition on
19 December 20, 2011. ECF No. 8. On March 9, 2012, Respondent filed a motion to dismiss the
20 petition without prejudice for failure to state a claim. ECF No. 20. The motion to dismiss is
21 based on Mr. Faircloth's failure to present any discrete claims in his petition. *Id.* On March 30,
22 2012, Mr. Faircloth filed a Motion for Extension of Time to file his response to the Respondent's
23 motion to dismiss. ECF No. 22.

24 On April 4, 2012, Mr. Faircloth filed a Motion for Voluntary Dismissal. ECF No. 23.
25 He claims that he has "newly discovered evidence resulting in his unexhaustion of his federal
26 claims in the state courts." ECF No. 23, at 1. Respondent does not object to the request for
voluntary dismissal subject to Mr. Faircloth filing a new habeas petition in the future, but
expressly reserves his right to assert that Mr. Faircloth's initial habeas petition was untimely
filed under 28 U.S.C. § 2844(d) and/or that his habeas claims were not properly exhausted in the
Washington State courts. ECF No. 24.

CONCLUSION

Based on the foregoing, the undersigned recommends that Mr. Faircloth's Motion for Voluntary Dismissal (ECF No. 23) be **GRANTED** and his Motion for Extension of Time (ECF No. 22) be **DENIED as moot**.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **May 4, 2012**, as noted in the caption.

DATED this 13th day of April, 2012.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge